IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No. 5580 of 2005

Between:

Bhemireddy Donga Babu S/o Marinayya
R/o Kindra Vilalge Rajavommangi (M)

East Godavari District

..... PETITIONER

AND

1 The Additional agent to the Government

East Godavari District at Rampachodavaram
2 The Special Deputy Collector (TW) Rampachodavaram,

East Godavari District
3 The Mandal Revenue Officer, Rajavommangi, East Godavari District
4 Kosuru Munayya S/o Thamma Rao Kindra Vilalge,

Rajavommangi (M), East Godavari District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue appropriate Writ or order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in evicting the petitioner from the land to an extent of ac. 4.94 cents in Sy. No. 140/2 of Kindra Village, Rajavommangi Mandal, East Godavari District pending consideration of the appeal and stay petition filed before the 1st respondent against the orders in LTRP No. 172/2004 dated 23-12-2004 on the file of the 2nd respondent as illegal arbitrary and unjust and consequently direct the respondents not to evict the petitioner from the above land pending disposal of the appeal and to pass such other order or orders as this Hon'ble Court may deem fit and proper

Counsel for the Petitioner: MR.K.VENKATESH

Counsel for the Respondent Nos.1 to 3: GP FOR SOCIAL WELFARE

The Court at the admission stage made the following:

ORDER:

Challenging the action of the respondents in evicting the petitioner from the land to an extent of Ac.4.94 cents, situated in Sy.No.140/2 of Kindra village, Rajavommangi Mandal, East Godavari District, the present writ petition is filed.

Heard the learned Counsel for the petitioner and the learned Government Pleader for Social Welfare.

Admittedly, the petitioner has filed an appeal before the 1st respondent/Additional Agent to the Government, and the same is pending. The grievance of the petitioner is that no orders have been passed in the stay application.

The learned Counsel for the petitioner relied upon an unreported decision of the Division Bench of this Court (in W.A.No.351 of 2005, dated 04.03.2005) in ***Bandaru Jagannatha Rao and another vs. The Additional Agent to the Government and 2 others,*** wherein a direction was given directing that "till the application for stay is taken up for consideration and disposed of by the 1st respondent, *status quo* as regards possession shall continue."

On the other hand, the learned Government Pleader for Social Welfare, relied upon a decision in ***P Siva Kumar vs. K.Subbaiah*** wherein their Lordships held that

> "In our view, the order passed in the writ petition seriously affected the rights of the appellant and inasmuch as the writ petition was finally disposed of at the admission stage, the appellant had no opportunity to contend that the writ petitioner had no *prima facie* case for grant of stay. We can understand such an order of stay being passed in the miscellaneous petition in the writ petition while keeping the writ petition pending, so that it would have been open to the appellant to come to this Court to make his submissions in regard to the order granting interim stay. But instead of granting interim stay in the miscellaneous petition, the writ petition itself was disposed granting stay and without notice to the appellant. We are, therefore,

clearly of the view that the order is any breach of principles of natural justice and is liable to be set aside."

Following the judgment, since a private party added as a party, no interim order can be passed, as it amounts to violation of principles of natural justice, in so far as unofficial 4th respondent is concerned. Therefore, the decision relied upon by the learned Counsel for the petitioner has no application to the present facts of the case.

Admittedly, the petitioner filed an appeal before the

1st respondent. The petitioner cannot be permitted to maintain two parallel proceedings in respect of the same cause of action. It is not a case of violation of principles of natural justice, so also it is not a case of violation of any fundamental right of the writ petitioner, and also it is not a case where the authority, who passed the impugned proceedings, has no jurisdiction. Therefore, no interim order can be passed.

Following the decision of the Division Bench of this Court, the Writ Petition is disposed of, directing the 1st respondent to take appropriate decision on the stay petition, filed by the petitioner. No order as to costs.

Dated: 21.03.2005

Dsr

Note:

Issue CC in two days

B/o

Dsr

ASSISTANT REGISTRAR

To:

1. The Addl.Agent to the Government,

Rampachodavaram, East Godavari District

2. The Special Deputy Collector (TW)]

Rampachodavaram, East Godavari District

3. The Mandal Revenue Officer,

Rajavommangi, East Godavari District

4. Two CCs to the Government Pleader for

Social Welfare, High Court Buildings,

Hyderabad (OUT)

5. Two CD copies

*Form-NIC-OGS/WP{**TRT**}*